IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4716 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIP CHHOTALAL PATEL

Versus

MUNICIPAL COMMISSIONER

Appearance:

1. Special Civil Application No. 4716 of 1989

MR IA PATEL for Petitioner No. 1

MR BP TANNA for Respondent No. 1-2

RULE SERVED for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/12/2003

ORAL JUDGEMENT

Total non-application of mind is exhibited by the learned Labour Judge while passing the impugned order.

The petitioner herein has preferred an application being Recovery Application No.2855/1985 by resorting to Section 33 C (2) of the Industrial Disputes Act.

2) The case of the petitioner-workman is that he is serving as a Telephone Operator in the L.G.Hospital of the Corporation. According to him, he has not been given any weekly leave or benefit of public holidays and he is required to serve continuously without any holiday worth the name. By preferring the said Recovery Application, it is prayed that he is required to be paid over time amount at the rate of Rs.8.87 ps. and on that basis he has prayed that he may be paid Rs.851.52 ps. by way of overtime wages.

3) The said application of the petitioner-workman was resisted on behalf of the respondents before the trial Court. A stand was taken by the department that the petitioner is not entitled to such payment because he is given the benefit of higher pay scale i.e. Rs.330-560/-. The learned Judge, after hearing both the sides, came to the conclusion that the petitioner is not entitled to the benefit of over time amount in view of the award passed by the Industrial Tribunal in Reference (IT) No.123/1980. The petitioner and such other set of employees have been given the benefit of higher pay scale and ultimately, their pay scale was revised to Rs.330-560/-. So far as Reference (I.T.) No.123/1980 is concerned, the said dispute was between Ahmedabad Municipal Corporation (Lallubhai Gordahnbhai General Hospital, Ahmedabad) and the Workmen employed under it. In the said dispute, the Court was concerned with the demand of the workmen for higher pay scale. In that case, the dispute was in connection with giving appropriate grade to the telephone operators working in the Hospital by giving them grade of Rs.330-560. In order to substantiate their demand, the Union, in the aforesaid reference, relied upon the pay-scale given by other departments of the Municipal Corporation and it was argued on behalf of the telephone operators serving in the L.G.Hospital that as a matter of fact they are performing more severe and onerous duty as compared with the operators working in other departments of the Corporation, as they are not even given weekly off and other festive holidays. Considering their demand and considering the aforesaid aspect of the matter, the Tribunal allowed the said reference. The relevant observation of the tribunal while accepting the said demand is as under :

"The Municipal Corporation Telephone Operators

> get the benefit of festival holidays. They also get the weekly off and Saturday as holidays while the Telephone Operators of hospitals have to work on all days and even on festival holidays. There appears to be no justification for Corporation paying lower grade to hospital Telephone Operators simply because years back the hospital telephone operators pay scale was less than that of the Municipal Corporation Telephone Operators, that the difference in the pay grade should be maintained. On the contrary the evidence shows that the hospital Telephone Operators have to work continuously without recess for eight hours getting no weekly Saturdays off and festival holidays as their counterparts working in Municipal Corporation. So there is no justification for paying them at lower pay scale. I think the demand of the Telephone Operators of this Hospital i.e. Lallubhai Gordhanbhai Hospital for pay scale of Rs.330/560 is just and proper."

4) Relying upon the said observation, the Labour Court, while passing the impugned order has come to the conclusion that since the petitioner has already been given the benefit of revised pay scale and at that time since the Tribunal has considered that they are performing rigorous duty by not even getting benefit of holiday, their claim for higher pay scale is justified and according to the Labour Court, since this higher grade was given to the concerned telephone operator, naturally they are not entitled to any monetary claim towards the overtime wages. In my view, the Labour Court has completely misread the order of the Tribunal. It is required to be noted that the Tribunal was concerned with the issue about giving higher pay scale. In that matter, the Tribunal was not at all concerned about overtime wages. It is an admitted fact that the present petitioner is not given the benefit of weekly or public holidays and his claim for overtime wages cannot be negatived on the ground that higher pay scale is given to the petitioner as per the award of the Tribunal.

5) So far as the award of the Tribunal in Reference (I.T.) No.123/1980 is concerned, it is entirely on different footing and in order to justify the claim of the workmen the Tribunal has incidentally taken into consideration the nature of the duty which the workmen are performing.

6) The Tribunal has not said that in lieu of weekly

holidays and overtime wages scale of Rs.330-560 is required to be given. Therefore, in my view, the Labour Court has committed a serious error in rejecting the Recovery Application solely by relying upon the decision of the Tribunal in the aforesaid reference. The Labour Court while deciding the Recovery Application has completely misread the aforesaid judgement by observing that the said scale of Rs.330-560 was given considering the fact that the workmen are not getting the benefit of weekly or any other public holidays. The Labour Court ought to have appreciated that in the said Reference before the Tribunal, the demand of the workmen was in connection with the higher pay scale. In order to justify the said claim, it was argued before the Tribunal that the telephone operators in the said Hospital, on whose behalf reference was made, were not given the benefit of regular weekly holidays or any other festive holidays. The Tribunal while adjudicating the said dispute has considered the aforesaid aspect and allowed the said reference by giving higher pay scale. The observation of the Tribunal is to be construed only in connection with said award. The aforesaid award has nothing to do with the demand of the present petitioner for overtime wages in lieu of weekly and other festive holidays. In the present proceedings, the Labour Court was required to consider whether the claim of the petitioner is justified on its merits or not.

7) In view of what is stated above, the impugned order passed by the Labour Court in Recovery Application No.2855/1985 is quashed and set aside. The matter is remanded to the Labour Court for reconsideration of the case on its merits as well as the Labour Court is directed to pass appropriate order afresh without taking into consideration the observations made by the Tribunal in reference (I.T.) No.123/1980. Now, the Labour Court may independently decide, as to whether the claim of the concerned workmen in the Recovery Application is justified for getting overtime wages. It is required to be noted that if the Court comes to the conclusion that there is a justification in the claim raised by the applicant in the Recovery Application, the quantum of amount which is required to be paid may also be decided. At this stage, the learned advocate for the petitioner submitted that since the matter is pending before this Court since last more than 14 years, he may be allowed to prefer appropriate amendment application in connection with the claim for the subsequent period before the Labour Court. In case, if any such amendment application is made, the Labour Court may decide the same in accordance with law. The Labour Court is directed to

decide the matter at the earliest and in any case by 30th April 2004, without any further delay.

8) This petition is accordingly allowed. Rule is made absolute with no order as to costs. Writ be sent to the Labour Court forthwith.

(P.B.Majmudar,J.)
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